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SUBJECT: FEDERAL COURT ORDERS RELEASE OF KHADR INTERROGATION  
EVIDENCE

1. (U) Summary: Canada's Federal Court has ordered the government to release sensitive information, including U.S. documents previously shared with Canadian authorities, to lawyers representing Canadian Guantanamo detainee Omar Khadr. The order derives from a recent Supreme Court of Canada (SCOC) decision that found that Canadian officials had acted illegally in interrogating Khadr at Guantanamo Bay. The presiding judge said that the information bolstered Khadr's claim that he was mistreated while in U.S. custody. The judge further remarked that the disclosure might harm Canada-U.S. relations, but that that information regarding interrogation techniques used at Guantanamo Bay was already in the public domain and, therefore, should not be protected. End summary.

2. (U) The June 25 Federal Court decision related to a prior Supreme Court of Canada ruling of May 23 that the Canadian Charter of Rights and Freedoms (Bill of Rights analogue) extends to the actions of Canadian officials abroad who participate in foreign proceedings that breach Canada's obligations under international law. The SCOC found that Canadian officials had acted illegally by interrogating Khadr at Guantanamo Bay in 2003 and 2004, and by sharing the resulting intelligence with U.S. authorities. It therefore ordered the Canadian government to disclose information to Khadr's lawyers relevant to his defense in U.S. military proceedings. The Canadian government had sought to protect the information on national security grounds. The SCOC tasked the Federal Court of Canada with reviewing relevant evidence held by Canadian authorities and determining what could be disclosed, subject to the need to balance Khadr's right to a fair trial with national security.

3. (U) The Federal Court of Canada found that Canadian officials "became implicated in the abuse of Khadr" by U.S. authorities when they interviewed him despite having knowledge of his treatment and of U.S. steps to "prepare" him for their visit. As a result, the Court ordered relevant documents and DVD recordings of the Canadian interrogation of Khadr to be released to Khadr's legal defense team. The court directed that the faces of U.S. and Canadian officials be blurred before the material is handed over. Additionally, it ordered interview notes and witness statements prepared by U.S. agents in advance of the Canadians' visit to be disclosed. The Court did not specify publicly what other information it wanted disclosed, but noted that the full package would be detailed in a private order by the Federal Court directly to the Khadr defense team. The Court has not publicly specified a date when the material must be turned over.

4. (U) Subject to conditions in the private court order, the Federal Court gave Khadr's legal team the right to release such information it receives, including to the media, as it sees fit. The Court denied a separate request by media outlets for the release of the information directly to them. Presiding Federal Court Justice

Richard Mosley acknowledged that while the release of the information, particularly the DVD evidence, "may cause some harm to Canada-U.S. relations, that effect will be minimized by the fact that the use of such interrogation techniques by the U.S. military Qthat the use of such interrogation techniques by the U.S. military at Guantanamo is now a matter of public record and debate."

¶5. (U) Justice Mosley ruled that his authority to order disclosure flowed exclusively from the SCOC decision in May and accompanying Charter remedy. He specifically stated that such disclosure was separate from Khadr's formal application of January 24, 2008 for disclosure under Section 38 of the Canada Evidence Act. Further, it was separate from a number of civil actions currently pending in Khadr's name in the Federal Court against the Canadian government respecting the provision of consular services and related issues, which could also result in additional disclosures.

¶6. (U) In one of his few observations that favored the government, Justice Mosley stated that his review of the evidence indicated that Canadian interrogators apparently had not acted with the purpose of helping U.S. authorities assemble a case against Khadr. He also revealed that U.S. authorities had inquired whether Khadr might be tried in Canada and had provided details about the U.S. evidence against Khadr to Canadian officials for that purpose.

COMMENT  
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¶7. (SBU) When it is publicly released, the Khadr material will be headline news in Canada and will stoke the political campaign for Khadr's repatriation, as well as the national and legal debate over balancing civil rights and national security. Canadian courts have

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become increasingly proactive in identifying what they determine to be the appropriate balance between the two. The Khadr case, the ongoing Khawaja terrorism trial, current immigration security certificate proceedings, and previous disclosures regarding Afghan detainees have put pressure on the Canadian government's ability to protect sensitive foreign security information. As a result, Canadian commentators on security have warned that the flow of law enforcement and intelligence information from friendly governments -- on which Canada is heavily dependent -- could be compromised due to the courts actions in this an other recent cases.

WILKINS